

REMARKS

Claims 1-11 are pending in this application. Claims 9-11 are allowed. Claims 3, 4 and 6 are objected to; and claims 1, 2, 5, 7 and 8 are rejected. Claims 1, 3 and 6 are amended hereby.

Responsive to the rejection of claims 1, 2 and 8 under 35 U.S.C. § 103(a) as being obvious by U.S. Patent No. 3,292,319 (McCarthy), Applicant has amended claim 1, and submits that claims 1, 2 and 8 are in condition for allowance.

McCarthy '319 discloses seagull guard 4 (Figs. 1-3) mounted on pleasure craft 1 having cabin superstructure 2 with a canopy (column 2, lines 3-7). Central hub bearing member 8 defining axial passageway 9 is enclosed at opposing ends thereof by bearings 10 and 11 (column 2, lines 17-20). Bearing 10 provides indentation 12 on its inner surface while bearing 11 is provided with a central aperture for receiving mounting rod member 13 (column 2, lines 20-22). Mounting member 13 is illustratively threaded into recessed socket 14 disposed in turn in canopy 3 of craft 1 (column 2, lines 22-25). A transversely disposed substantially flat circuit plate 15 is permanently secured to the end of hub member 8 adjacent bearing 10 (column 2, lines 25-27). A plurality of fastening members 16 are radially disposed on the upper surface of plate 15 (column 2, lines 27-29). Typically secured to members 16 are elongated arms 17 with the pivot pin indicated by numeral 18 (column 2, lines 31-32). Each arm 17 is provided with step portion 19 to facilitate storage (column 2, lines 33-34). Concavo-convex members 20 and 21 are disposed adjacent to the ends of arms 17 (column 2, lines 34-36). Single vane member 50 (Figs. 11-12) is mounted on pin 51 disposed at the end of arm 52 as a single wind controlling actuating element (column 3, lines 55-58). Ball member 53 is provided at the opposite end on arm 54 as a safety device to prevent the arm from injuring someone in the eye (column 3, lines 57-60). In Fig. 2, the embodiment is shown in the **non-operational position** with arms 17 in an upright vertical

juxtaposition to provide for easy removal from mounting member 13 (column 2, lines 42-45).

(Emphasis added.)

In contrast, claim 1, as amended, recites in part: “each said arm extending from said hub at an angle above horizontal when each said arm is in an operational position . . .”. (Emphasis added.) Applicant submits that such an invention is neither taught, disclosed nor suggested by McCarthy ‘319 or any of the other cited references, alone or in combination, and has distinct advantages thereover.

McCarthy ‘319 discloses a sea gull guard with arms which can be in an upright vertical juxtaposition when the arms are in a non-operational position. The vertical dancing, with minimum wind, type functionality of the present invention resulting from a prestressed condition results in part from arms extending from the hub at an angle above the horizontal when the arms are in an operational position. McCarthy ‘319 fails to disclose or suggest each arm extending from the hub at an angle above horizontal when each arm is in an operational position.

An advantage of the present invention is a marine pest deterrent which does not lose its effectiveness.

For all of the foregoing reasons, Applicant submits that claim 1, and claims 2 and 8 depending therefrom, are in condition for allowance, which is hereby respectfully requested.

Responsive to the rejection of claims 5 and 7 under 35 U.S.C. § 103(a) as being obvious by U.S. Patent No. 3,292,319 (McCarthy) in view of U.S. Patent No. 2,596,678 (Gross), Applicant has amended claim 1, and submits that claims 1, 5 and 7 are in condition for allowance. The amendment to claim 1 described above distinguishes claim 1, and any dependent claim including claims 5 and 7, from the cited prior art including McCarthy ‘319 and Gross ‘678. For

all of the foregoing reasons, Applicant submits that claim 1, and claims 5 and 7 depending therefrom, are in condition for allowance, which is hereby respectfully requested.

For the foregoing reasons, Applicant submits that no combination of the cited references teaches, discloses or suggests the subject matter of the amended claims. The pending claims are therefore in condition for allowance, and Applicant respectfully requests withdrawal of all rejections and allowance of the claims.

In the event Applicant has overlooked the need for an extension of time, an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefor and authorizes that any charges be made to Deposit Account No. 20-0095, TAYLOR & AUST, P.C.

Should any question concerning any of the foregoing arise, the Examiner is invited to telephone the undersigned at (260) 897-3400.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: March 8, 2005.

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Signature

March 8, 2005

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